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June 5, 2006

## BY CM/ECF AND HAND DELIVERY

The Honorable Kent A. Jordan  
 United States District Court  
 844 N. King Street  
 Wilmington, DE 19801

Re: Cryovac, Inc. v. Pechiney Plastic Packaging, Inc., C.A. No. 04-1278-KAJ

Dear Judge Jordan:

We submit this letter on behalf of plaintiff Cryovac, Inc., for this morning's teleconference. Cryovac asks that you compel the presence at trial during Cryovac's case-in-chief of Robert Taylor, Vice President and General Manager – Meat and Dairy of Pechiney. (See Tab 1 (describing Mr. Taylor)). Mr. Taylor is the central character in Pechiney's development and sale of its infringing Clearshield® product. He initiated the project, was in charge of the business unit which carried out the project, approved (along with others) the capital appropriation for the project, and was directly involved with National Beef in interference with Cryovac's existing contract with National Beef. He is central to the issues of tortious interference, willful infringement, damages, and is also relevant to issues regarding validity of the patent.

Cryovac advised Pechiney that it intended to call Mr. Taylor in its case-in-chief and asked that he be present on June 12 to be an early witness. Pechiney responded initially that it intended to call Mr. Taylor in its case-in-chief and suggested that he be called later in Cryovac's case so that he would not need to be in Delaware for a protracted time. Later Pechiney changed its position and said that it would not produce Mr. Taylor during Cryovac's case because he is not subject to a subpoena but might call him during Pechiney's case.

While Cryovac has deposed Mr. Taylor and can play a video of his deposition, we believe that the jury is entitled to see the central character in Pechiney's infringing project in person during Cryovac's case-in-chief. Cryovac has subpoenaed Mr. Taylor through Pechiney's agent for service of process in Delaware, but believes that in any event the Court should instruct Pechiney to produce Mr. Taylor for Cryovac's case in chief on June 12.

Subpoenas are valid when addressed to parties and officers of a party, even when the witness must travel further than 100 miles to the courthouse. See, e.g., NWL Holdings, Inc. v. Eden Ctr., Inc. (In re Ames Dep't Stores, Inc.), 2004 Bankr. LEXIS 1027 (S.D.N.Y. June 25, 2004) (holding

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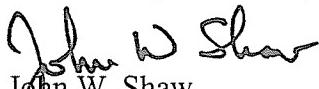
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that the text and history of Fed. R. Civ. P. 45(c)(3)(A)(ii) dictate that geographic restrictions on subpoenas are not applicable to parties and officers) (distinguishing contrary cases) (Tab 2); American Fed'n of Gov't Employees, Local 922 v. Ashcroft, 354 F. Supp. 2d 909, 915 (E.D. Ark. 2003) ("The majority of courts to consider the issue have held that a court may compel the trial testimony of parties and, where the party is a corporation or entity, the party's high-level employees or officers, even when the person to be compelled resides beyond the 100-mile range for subpoenas.") (collecting cases); Ferrell v. IBP, Inc., 2000 WL 34032907 (N.D. Iowa Apr. 28, 2000) (denying motion to quash trial subpoena on two "high-ranking officers" of defendant) (relying on Rule 45(c)(3)(A)(ii) and collecting cases) (Tab 3); Stone v. Morton Int'l, Inc., 170 F.R.D. 498, 500-01 (D. Utah 1997) (treating managing agents to officers and holding that Rule 45 extends subpoena power to party officers, regardless of location).

Respectfully submitted,

  
John W. Shaw  
No. 3362

cc: Clerk of the Court (by hand delivery)  
N. Richard Powers (by CM/ECF and hand delivery)